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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/664,373

09/17/2003

Michael Charles Raufman

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27752 7590 10/13/2010
THE PROCTER & GAMBLE COMPANY
Global Legal Department - IP
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EXAMINER

KIDWELL, MICHELE M

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

10/13/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/664,373	Applicant(s) RAUFMAN ET AL.	
	Examiner Michele Kidwell	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 26 August 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>6/7/10</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pozniak et al. (US 6,045,543) in view of Fidler (US 6,243,543).

As to claim 1, Pozniak et al. (hereinafter referred to as “Pozniak”) discloses a disposable absorbent article (8) comprising (a) a chassis, a garment-facing surface and a body-facing surface, the chassis adapted to extend from a back waist area of a wearer to a front waist area of a wearer with the body-facing surface overlying the crotch area of the wearer, the chassis including a first waist region, a second waist region and a crotch region (figure 1); (b) a pair of side panels extending substantially laterally outward from respective edge portions of the second waist region of the article (figure 5), the side panels each carrying a securement element for engagement with the garment-facing surface at the first waist region of the article for securing the article in a wearing position on the wearer (figure 5 – elements 36A and 36B); (c) a predetermined ornamental visual image consisting of a first, second and third incomplete image element each being different and each having a shape, wherein the first incomplete image element is joined to one of the pair of side panels and the second incomplete

image element is joined to another of the pair of side panels, and the third incomplete image element is disposed on the first waist region of the article wherein the predetermined ornamental visual element is visible and complete when the side panels are secured to the first waist region and the first, second and third incomplete image elements together complete the predetermined ornamental visual image as set forth in col. 3, lines 8 – 19 and figures 2 – 5. The examiner contends that the manner by which the indicia is placed onto the garment (i.e., disposed, printed, etc.) is a product by process limitation that does not patentably distinguish the claimed invention from the prior art.

The difference between Pozniak and claim 1 is the provision that the predetermined ornamental visual image is a cartoon character.

Fidler teaches a closing mechanism that includes an adjustable image (col. 6, lines 50 – 58) that includes the image of a cartoon character as set forth in col. 8, lines 48 – 51.

It would have been obvious to one of ordinary skill in the art to substitute the visual image of Pozniak with the image taught by Fidler because Pozniak recognizes the use of various images (col. 10, lines 48 – 50) and the substitution of one type of visual element for another is within the level of ordinary skill in the art.

With reference to claim 2, Pozniak discloses an article wherein the securement elements include fastener tabs that have a predetermined ornamental shape as set forth in figure 5.

Response to Arguments

Applicant's arguments filed August 26, 2010 have been fully considered but they are not persuasive.

The applicant argues the structure of Fidler. The examiner contends that Fidler is relied upon for the teaching of cartoon characters. Pozniak provides the structure as claimed teaching various images as being suitable for use with the invention. Fidler is simply relied upon for the teaching of a specific image (i.e. a cartoon character).

It would have been obvious to one of ordinary skill in the art to provide a cartoon character as the image as taught by Fidler because Pozniak recognizes the use of various images (col. 10, lines 48 – 50) and the substitution of one type of visual element for another is within the level of ordinary skill in the art.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michele Kidwell/

Primary Examiner, Art Unit 3761